

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ALBERT DOERBECKER, ADMINISTRATOR OF THE
ESTATE OF KURT DOERBECKER; ALBERT
DOERBECKER; and MARIE DOERBECKER,

Plaintiffs,

-against-

NASSAU COUNTY; POLICE OFFICER SHEVACH
BERKOVITS; SGT. NICHOLAS STILLMAN; SGT.
JACQUELINE LEWIS; LT. JOHN KELLY; LT. JOHN
HERMANN; POLICE OFFICER EDWARD CARLSON
AND JANE AND JOHN DOES 1-10,

Defendants.

----- X
Defendants, Nassau County, Police Officer Shevach Berkovits, Sgt. Nicholas
Stillman, Sgt. Jacqueline Lewis, Lt. John Kelly, Lt. John Hermann and Police Officer
Edward Carlson (hereinafter "County Defendants"), by their attorney, John Ciampoli,
Nassau County Attorney, by Peter A. Laserna, Deputy County Attorney, as and for their
Answer to Plaintiffs' First Amended Complaint (the "Complaint") respond as follows:

AS AND FOR AN ANSWER TO SECTION: NATURE OF THE ACTION

1. Deny the allegations set forth in paragraph of "1" of the Complaint.
2. Deny the allegations set forth in paragraph "2" of the Complaint.
3. Deny the allegations set forth in paragraph "3" of the Complaint.
4. Deny the allegations set forth in paragraph "4" of the Complaint.

AS AND FOR AN ANSWER TO SECTION: JURISDICTION AND VENUE

5. Deny the allegations set forth in paragraph "5" of the Complaint and refer
all issues of law to the Court.
6. Deny the allegations set forth in paragraph "6" of the Complaint and refer

12-CV-2204
(LDW)(ARL)

COUNTYY
DEFENDANTS' ANSWER
TO PLAINTIFFS' FIRST
AMENDED COMPLAINT

all issues of law to the Court.

AS AND FOR AN ANSWER TO SECTION: PARTIES

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "7" of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "8" of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "9" of the Complaint.

10. Deny the allegations set forth in paragraph "10" of the Complaint, except aver that Defendant County of Nassau is a municipal corporation duly organized and existing pursuant to the laws of the State of New York.

11. Deny the allegations set forth in paragraph "11" of the Complaint, except aver, that Defendant Police Officer Shevach Berkovits is a natural person and is a police officer in the Nassau County Police Department.

12. Deny the allegations set forth in paragraph "12" of the Complaint, except aver, that Defendant Sgt. Nicholas Stillman is a natural person and is a police officer in the Nassau County Police Department.

13. Deny the allegations set forth in paragraph "13" of the Complaint, except aver, that Defendant Sgt. Jacqueline Lewis is a natural person and is a police officer in the Nassau County Police Department.

14. Deny the allegations set forth in paragraph "14" of the Complaint, except aver, that Defendant Lt. John Kelly is a natural person and is a police officer in the Nassau County Police Department.

15. Deny the allegations set forth in paragraph "15" of the Complaint, except aver, that Defendant Lt. John Hermann is a natural person and is a police officer in the Nassau County Police Department.

16. Deny the allegations set forth in paragraph "16" of the Complaint, except aver, that Defendant Police Officer Edward Carlson is a natural person and is a police officer in the Nassau County Police Department.

AS AND FOR AN ANSWER TO SECTION: JURY DEMAND

17. As there are no allegations contained in paragraph "17," no answer is required.

**AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section A.**

18. Deny the allegations contained in paragraph "18" of the Complaint, except aver that Nassau County was aware of and it anticipated that Hurricane Irene would make landfall on coastal Long Island.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "19" of the Complaint.

20. Deny the allegation contained in paragraph "20" of the Complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "21" of the Complaint.

22. Deny the allegations contained in paragraph "22" of the Complaint.

AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section B.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "23" of the Complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "24" of the Complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "25" of the Complaint.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "26" of the Complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "27" of the Complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "28" of the Complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "29" of the Complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "30" of the Complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "31" of the Complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "32" of the Complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "33" of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "34" of the Complaint.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "35" of the Complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "36" of the Complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "37" of the Complaint.

AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section C

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "38" of the Complaint.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "39" of the Complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "40" of the Complaint.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "41" of the Complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "42" of the Complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "43" of the Complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "44" of the Complaint.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "45" of the Complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "46" of the Complaint.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "47" of the Complaint.

AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section D.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "48" of the Complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "49" of the Complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "50" of the Complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "51" of the Complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "52" of the Complaint.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "53" of the Complaint.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "54" of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "55" of the Complaint.

56. Deny the allegations contained in paragraph "56" of the Complaint.
57. Deny the allegations contained in paragraph "57" of the Complaint.
58. Deny the allegations contained in paragraph "58" of the Complaint.
59. Deny the allegations contained in paragraph "59" of the Complaint.
60. Deny the allegations contained in paragraph "60" of the Complaint.
61. Deny the allegations contained in paragraph "61" of the Complaint.
62. Deny the allegations contained in paragraph "62" of the Complaint.
63. Deny the allegations contained in paragraph "63" of the Complaint.
64. Deny the allegations contained in paragraph "64" of the Complaint.
65. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "65" of the Complaint.
66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "66" of the Complaint.
67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "67" of the Complaint.
68. Deny the allegations contained in paragraph "68" of the Complaint.
69. Deny the allegations contained in paragraph "69" of the Complaint.
70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "70" of the Complaint.

AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section E.

71. Deny the allegations contained in paragraph "71" of the Complaint.
72. Deny the allegations contained in paragraph "72" of the Complaint, except aver, that Nassau County Police Department Bureau of Special Operations responded to

the scene.

73. Deny the allegations contained in paragraph "73" of the Complaint.

74. Deny the allegations contained in paragraph "74" of the Complaint.

75. Deny the allegations contained in paragraph "75" of the Complaint.

76. Deny the allegations contained in paragraph "76" of the Complaint.

77. Deny the allegations contained in paragraph "77" of the Complaint.

78. Deny the allegations contained in paragraph "78" of the Complaint.

79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "79" of the Complaint.

80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "80" of the Complaint.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "81" of the Complaint.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "82" of the Complaint.

83. Deny the allegations contained in paragraph "83" of the Complaint.

84. Deny the allegations contained in paragraph "84" of the Complaint.

AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section F.

85. Deny the allegations contained in paragraph "85" of the Complaint.

86. Deny the allegations contained in paragraph "86" of the Complaint.

87. Deny the allegations contained in paragraph "87" of the Complaint.

88. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "88" of the Complaint.

89. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "89" of the Complaint.

90. Deny the allegations contained in paragraph "90" of the Complaint.

91. Deny the allegations contained in paragraph "91" of the Complaint.

92. Deny the allegations contained in paragraph "92" of the Complaint.

93. Deny the allegations contained in paragraph "93" of the Complaint.

94. Deny the allegations contained in paragraph "94" of the Complaint.

95. Deny the allegations contained in paragraph "95" of the Complaint.

96. Deny the allegations contained in paragraph "96" of the Complaint.

97. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "97" of the Complaint.

98. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "98" of the Complaint.

AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section G.

99. Deny the allegations contained in paragraph "99" of the Complaint.

100. Deny the allegations contained in paragraph "100" of the Complaint.

101. Deny the allegations contained in paragraph "101" of the Complaint.

102. Deny the allegations contained in paragraph "102" of the Complaint.

103. Deny the allegations contained in paragraph "103" of the Complaint.

104. Deny the allegations contained in paragraph "104" of the Complaint.

105. Deny the allegations contained in paragraph "105" of the Complaint.

106. Deny the allegations contained in paragraph "106" of the Complaint.

107. Deny the allegations contained in paragraph "107" of the Complaint.

108. Deny the allegations contained in paragraph "108" of the Complaint.

109. Deny the allegations contained in paragraph "109" of the Complaint.

110. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "110" of the Complaint.

111. Deny the allegations contained in paragraph "111" of the Complaint.

112. Deny the allegations contained in paragraph "112" of the Complaint.

113. Deny the allegations contained in paragraph "113" of the Complaint.

114. Deny the allegations contained in paragraph "114" of the Complaint.

115. Deny the allegations contained in paragraph "115" of the Complaint.

116. Deny the allegations contained in paragraph "116" of the Complaint.

117. Deny the allegations contained in paragraph "117" of the Complaint.

118. Deny the allegations contained in paragraph "118" of the Complaint.

119. Deny the allegations contained in paragraph "119" of the Complaint.

120. Deny the allegations contained in paragraph "120" of the Complaint.

121. Deny the allegations contained in paragraph "121" of the Complaint.

122. Deny the allegations contained in paragraph "122" of the Complaint.

123. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "123" of the Complaint.

124. Deny the allegations contained in paragraph "124" of the Complaint.

125. Deny the allegations contained in paragraph "125" of the Complaint.

126. Deny the allegations contained in paragraph "126" of the Complaint.

AS AND FOR AN ANSWER TO SECTION:
FACTUAL STATEMENT Section H.

127. Deny the allegations contained in paragraph "127" of the Complaint.

128. Deny the allegations contained in paragraph "128" of the Complaint.

129. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "129" of the Complaint.

130. Deny the allegations contained in paragraph "130" of the Complaint.

131. Deny the allegations contained in paragraph "131" of the Complaint.

132. Deny the allegations contained in paragraph "132" of the Complaint.

133. Deny the allegations contained in paragraph "133" of the Complaint.

134. Deny the allegations contained in paragraph "134" of the Complaint, except to aver, that a document which purported to be a notice of claim was served upon the municipal defendants on November 22, 2011.

135. Deny the allegations contained in paragraph "135" of the Complaint, except aver that that hearings of Albert Doerbecker, Marie Doerbecker and Albert Doerbecker as Administrator of the Estate of Kurt Doerbecker were completed on February 13, 2012.

136. Deny the allegations contained in paragraph "136" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' FIRST CAUSE ACTION

137. Answering paragraph "137" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "136" of the Complaint as though fully set forth herein.

138. Deny the allegations contained in paragraph "138" of the Complaint.

139. Deny the allegations contained in paragraph "139" of the Complaint.

140. Deny the allegations contained in paragraph "140" of the Complaint.

141. Deny the allegations contained in paragraph "141" of the Complaint.

142. Deny the allegations contained in paragraph "142" of the Complaint.

143. Deny the allegations contained in paragraph "143" of the Complaint.

144. Deny the allegations contained in paragraph "144" of the Complaint.

145. Deny the allegations contained in paragraph "146" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' SECOND CAUSE ACTION

146. Answering paragraph "146" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "145" of the Complaint as though fully set forth herein.

147. Deny the allegations contained in paragraph "147" of the Complaint.

148. Deny the allegations contained in paragraph "148" of the Complaint.

149. Deny the allegations contained in paragraph "149" of the Complaint.

150. Deny the allegations contained in paragraph "150" of the Complaint.

151. Deny the allegations contained in paragraph "151" of the Complaint.

152. Deny the allegations contained in paragraph "152" of the Complaint.

153. Deny the allegations contained in paragraph "153" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' THIRD CAUSE ACTION

154. Answering paragraph "154" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "153" of the Complaint as though fully set forth herein.

155. Deny the allegations contained in paragraph "155" of the Complaint.

156. Deny the allegations contained in paragraph "156" of the Complaint.

157. Deny the allegations contained in paragraph "157" of the Complaint.

158. Deny the allegations contained in paragraph "158" of the Complaint.

159. Deny the allegations contained in paragraph "159" of the Complaint.

160. Deny the allegations contained in paragraph "160" of the Complaint.

161. Deny the allegations contained in paragraph "161" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' FOURTH CAUSE ACTION

162. Answering paragraph "162" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "161" of the Complaint as though fully set forth herein.

163. Deny the allegations contained in paragraph "163" of the Complaint.

164. Deny the allegations contained in paragraph "164" of the Complaint.

165. Deny the allegations contained in paragraph "165" of the Complaint.

166. Deny the allegations contained in paragraph "166" of the Complaint.

167. Deny the allegations contained in paragraph "167" of the Complaint.

168. Deny the allegations contained in paragraph "168" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' FIFTH CAUSE ACTION

169. Answering paragraph "169" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "168" of the Complaint as though fully set forth herein.

170. Deny the allegations contained in paragraph "170" of the Complaint.

171. Deny the allegations contained in paragraph "171" of the Complaint.

172. Deny the allegations contained in paragraph "172" of the Complaint.

173. Deny the allegations contained in paragraph "173" of the Complaint.

174. Deny the allegations contained in paragraph "174" of the Complaint.

175. Deny the allegations contained in paragraph "175" of the Complaint.

176. Deny the allegations contained in paragraph "176" of the Complaint.

177. Deny the allegations contained in paragraph "177" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' SIXTH CAUSE ACTION

178. Answering paragraph "178" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "177" of the Complaint as though fully set forth herein.

179. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth paragraph "179" of the Complaint.

180. Deny the allegations contained in paragraph "180" of the Complaint.

181. Deny the allegations contained in paragraph "181" of the Complaint.

182. Deny the allegations contained in paragraph "182" of the Complaint.

183. Deny the allegations contained in paragraph "183" of the Complaint.

184. Deny the allegations contained in paragraph "184" of the Complaint.

185. Deny the allegations contained in paragraph "185" of the Complaint.

186. Deny the allegations contained in paragraph "186" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' SEVENTH CAUSE ACTION

187. Answering paragraph "187" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "186" of the Complaint as though fully set forth herein.

188. Deny the allegations contained in paragraph "188" of the Complaint.

189. Deny the allegations contained in paragraph "189" of the Complaint.

190. Deny the allegations contained in paragraph "190" of the Complaint.

191. Deny the allegations contained in paragraph "191" of the Complaint.

192. Deny the allegations contained in paragraph "192" of the Complaint.

193. Deny the allegations contained in paragraph "193" of the Complaint.

194. Deny the allegations contained in paragraph "194" of the Complaint, except aver that Albert Doerbecker was not charged with a crime.

195. Deny the allegations contained in paragraph "195" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' EIGHTH CAUSE ACTION

196. Answering paragraph "196" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "195" of the Complaint as though fully set forth herein.

197. Deny the allegations contained in paragraph "197" of the Complaint.

198. Deny the allegations contained in paragraph "198" of the Complaint.

199. Deny the allegations contained in paragraph "199" of the Complaint.

200. Deny the allegations contained in paragraph "200" of the Complaint.

201. Deny the allegations contained in paragraph "201" of the Complaint.

202. Deny the allegations contained in paragraph "202" of the Complaint.

203. Deny the allegations contained in paragraph "203" of the Complaint, except aver that Albert Doerbecker was not charged with a crime.

204. Deny the allegations contained in paragraph "204" of the Complaint.

205. Deny the allegations contained in paragraph "205" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' NINTH CAUSE ACTION

206. Answering paragraph "206" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "205" of the Complaint as though fully set forth herein.

207. Deny the allegations contained in paragraph "207" of the Complaint.

208. Deny the allegations contained in paragraph "208" of the Complaint.

209. Deny the allegations contained in paragraph "209" of the Complaint.

210. Deny the allegations contained in paragraph "210" of the Complaint.

211. Deny the allegations contained in paragraph "211" of the Complaint.

212. Deny the allegations contained in paragraph "212" of the Complaint.

213. Deny the allegations contained in paragraph "213" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' TENTH CAUSE ACTION

214. Answering paragraph "214" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "213" of the Complaint as though fully set forth herein.

215. Deny the allegations contained in paragraph "215" of the Complaint.

216. Deny the allegations contained in paragraph "216" of the Complaint.

217. Deny the allegations contained in paragraph "217" of the Complaint.

218. Deny the allegations contained in paragraph "218" of the Complaint.

219. Deny the allegations contained in paragraph "219" of the Complaint.

220. Deny the allegations contained in paragraph "220" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' ELEVENTH CAUSE ACTION

221. Answering paragraph "221" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "220" of the Complaint as though fully set forth herein.

222. Deny the allegations contained in paragraph "222" of the Complaint.

223. Deny the allegations contained in paragraph "223" of the Complaint.

224. Deny the allegations contained in paragraph "224" of the Complaint.

225. Deny the allegations contained in paragraph "225" of the Complaint.

226. Deny the allegations contained in paragraph "226" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' TWELTH CAUSE ACTION

227. Answering paragraph "227" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "226" of the Complaint as though fully set forth herein.

228. Deny the allegations contained in paragraph "228" of the Complaint.

229. Deny the allegations contained in paragraph "229" of the Complaint.

230. Deny the allegations contained in paragraph "230" of the Complaint.

231. Deny the allegations contained in paragraph "231" of the Complaint.

232. Deny the allegations contained in paragraph "232" of the Complaint.

233. Deny the allegations contained in paragraph "233" of the Complaint.

234. Deny the allegations contained in paragraph "234" of the Complaint, except aver that Marie Doerbecker was not charged with a crime.

235. Deny the allegations contained in paragraph "235" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' THIRTEENTH CAUSE ACTION

236. Answering paragraph "236" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "235" of the Complaint as though fully set forth herein.

237. Deny the allegations contained in paragraph "237" of the Complaint.

238. Deny the allegations contained in paragraph "238" of the Complaint.

239. Deny the allegations contained in paragraph "239" of the Complaint.

240. Deny the allegations contained in paragraph "240" of the Complaint.

241. Deny the allegations contained in paragraph "241" of the Complaint.

242. Deny the allegations contained in paragraph "242" of the Complaint.

243. Deny the allegations contained in paragraph "243" of the Complaint, except aver that Marie Doerbecker was not charged with a crime.

244. Deny the allegations contained in paragraph "244" of the Complaint.

245. Deny the allegations contained in paragraph "245" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' FOURTEENTH CAUSE ACTION

246. Answering paragraph "246" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "245" of the Complaint as though fully set forth herein.

247. Deny the allegations contained in paragraph "247" of the Complaint.

248. Deny the allegations contained in paragraph "248" of the Complaint.

249. Deny the allegations contained in paragraph "249" of the Complaint.

250. Deny the allegations contained in paragraph "250" of the Complaint.

251. Deny the allegations contained in paragraph "251" of the Complaint.

252. Deny the allegations contained in paragraph "252" of the Complaint.

253. Deny the allegations contained in paragraph "253" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFFS' FIFTEENTH CAUSE ACTION

254. Answering paragraph "254" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "253" of the Complaint as though fully set forth herein.

255. Deny the allegations contained in paragraph "255" of the Complaint.

256. Deny the allegations contained in paragraph "256" of the Complaint.

257. Deny the allegations contained in paragraph "257" of the Complaint.

258. Deny the allegations contained in paragraph "258" of the Complaint.

259. Deny the allegations contained in paragraph "259" of the Complaint.

260. Deny the allegations contained in paragraph "260" of the Complaint.

AS AND FOR A RESPONSE TO PLAINTIFF'S SIXTEENTH CAUSE ACTION

261. Answering paragraph "261" of the Complaint, County Defendants repeat and reaver each and every response herein to paragraphs "1" through "261" of the Complaint as though fully set forth herein.

262. Deny the allegations set forth in paragraph "262" of the Complaint.

263. Deny the allegations set forth in paragraph "263" of the Complaint.

264. Deny the allegations set forth in paragraph "264" of the Complaint.

265. Deny the allegations set forth in paragraph "264" of the Complaint.

266. Deny the allegations set forth in paragraph "266" of the Complaint.

RESPONDING TO RELIEF REQUESTED IN PLAINTIFF'S COMPLAINT

County Defendants deny that Plaintiffs are entitled to the relief requested in paragraphs "a" through "d" following Paragraph "266" of the Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR COUNTY DEFENDANTS' FIRST AFFIRMATIVE DEFENSE

267. Plaintiffs' Complaint and each and every claim set forth therein, fails to state a claim upon which relief can be granted.

AS AND FOR COUNTY DEFENDANTS' SECOND AFFIRMATIVE DEFENSE

268. The alleged acts or omissions of the named Defendants herein, and/or any

agents, servants or employees, under the case of *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978) and its progeny, do not create vicarious liability against the County of Nassau pursuant to the doctrine of *respondeat superior* and consequently the County of Nassau cannot be liable for any acts or conduct of any individual defendant herein, and/or agents, servants or employees with respect to any or all claims brought pursuant to 42 U.S.C. Section 1983.

AS AND FOR COUNTY DEFENDANTS' THIRD AFFIRMATIVE DEFENSE

269. The actions complained of herein were in full accord with the applicable law.

AS AND FOR COUNTY DEFENDANTS' FOURTH AFFIRMATIVE DEFENSE

270. County Defendants have not violated Plaintiffs' Constitutional and statutory rights.

AS AND FOR COUNTY DEFENDANTS' FIFTH AFFIRMATIVE DEFENSE

271. That at all times herein mentioned and mentioned in the complaint, the police officers, and/or agents, servants or employees of the Defendant County of Nassau, having anything to do with the Plaintiff were in the performance of their respective duties as police officers, and/or agents, servants or employees of the Defendant County of Nassau; that all of the acts performed by each police officer, peace officer, and/or agent, servant or employee of the Defendant County of Nassau in connection with the Plaintiff were performed in good faith, without malice, and with reasonable, proper and probable cause.

AS AND FOR COUNTY DEFENDANTS' SIXTH AFFIRMATIVE DEFENSE

272. Plaintiffs' claims are barred by the applicable statutes of limitation.

AS AND FOR COUNTY DEFENDANTS' SEVENTH AFFIRMATIVE DEFENSE

273. Plaintiffs have failed to exhaust their administrative remedies.

AS AND FOR COUNTY DEFENDANTS' EIGHTH AFFIRMATIVE DEFENSE

274. The County of Nassau, its agencies, departments and employees at all applicable times herein enjoyed a full, partial or qualified immunity from civil suit.

AS AND FOR COUNTY DEFENDANTS' NINTH AFFIRMATIVE DEFENSE

275. That should Plaintiffs recover damages as a result of a finding of liability in whole or in part against County Defendants, such recovery should be reduced and diminished to the degree of comparative negligence of Plaintiff in contributing to such damage.

AS AND FOR COUNTY DEFENDANTS' TENTH AFFIRMATIVE DEFENSE

276. That if the Plaintiffs sustained the damages as alleged in the Complaint, such damages were sustained solely through and by virtue of the negligent reckless and/or wrongful conduct of the Plaintiffs without any negligence reckless and/or wrongful conduct of the Defendant Nassau County, its agents servants or employees contributing thereto.

**AS AND FOR COUNTY DEFENDANTS'
ELEVENTH AFFIRMATIVE DEFENSE**

277. Plaintiffs have failed to mitigate damages in this matter.

**AS AND FOR COUNTY DEFENDANTS'
TWELFTH AFFIRMATIVE DEFENSE**

278. Punitive damages may not be recovered against the County of Nassau as a matter of law.

AS AND FOR COUNTY DEFENDANTS'
THIRTEENTH AFFIRMATIVE DEFENSE

279. The Nassau County Police Department is not a suable entity.

AS AND FOR COUNTY DEFENDANTS'
FOURTEENTH AFFIRMATIVE DEFENSE

280. Plaintiffs have not properly complied with sections 50-e, 50-i or 50-h of the New York General Municipal Law or section 52 of the New York County Law.

AS AND FOR COUNTY DEFENDANTS'
FIFTEENTH AFFIRMATIVE DEFENSE


281. At all pertinent times, the County Defendants had a valid warrant and the actions of the police officers herein are immune from civil liability.

WHEREFORE, County Defendants respectfully request an Order dismissing the First Amended Complaint *with prejudice* and for such other and further relief as this Court deems just and proper.

Dated: Mineola, New York
September 21, 2012

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BY:


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